

# **Mahoning County Criminal Local Rules of Court**

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## **RULE ONE – APPLICABILITY**

These rules shall govern the practice and procedure in criminal cases in the Court of Common Pleas, Mahoning County, Ohio. The state and local rules of practice for civil cases apply to all criminal procedures except where otherwise provided in the state and local rules of criminal procedure or where clearly inapplicable.

## **RULE TWO – GRAND JURY**

- (A) Cases bound over to the Grand Jury from a lower court shall include the date of arrest displayed on the transcript in a prominent place under the special heading:  
DATE OF ARREST: \_\_\_\_\_. The transcript shall also note whether or not the accused has been released on bond and the date of said release.
- (B) A Judge of the General Division of the Common Pleas Court shall be in charge of the Grand Jury for all purposes, and shall serve as Grand Jury Judge for a period of four months, consisting of one term of court. The judges will rotate this responsibility in order of their respective courtroom numbers. The Grand Jury Judge shall appoint the Foreman and Deputy Foreman of the Grand Jury.
- (1) The Grand Jury Judge shall appoint counsel for all indigent defendants in the Common Pleas Court at or before arraignment; hear applications for and, if appropriate, issue search warrants; hear and decide extraditions; and hear and decide all matters in criminal cases prior to assignment of a case to a particular court.
- (2) If the Grand Jury Judge is not available, matters shall be referred to the next available Judge according to ascending courtroom numbers.
- (C) All proceedings and testimony before a Grand Jury, except deliberations and the voting of the Grand Jury, shall be stenographically recorded. However, the Official Court Reporter shall not prepare, for use by either the prosecution or a defendant, transcripts of Grand Jury proceedings except upon order of the Court.
- (D) Requests by Grand Jurors to be excused, whether temporary or permanent, shall be referred to the Judge currently presiding over the Grand Jury, or to the designated representative of the Judge as provided by law.

### **RULE THREE – DISMISSALS**

No case shall be dismissed without presentment to a Grand Jury, including a nolle prosequi pursuant to O.R.C. 2941.33, except upon written application to the Court pursuant to Ohio Criminal Rule 48(A). “Case” shall include any charge against a defendant bound over to the Grand Jury from a lower court.

#### **RULE FOUR – APPOINTMENT OF COUNSEL**

- (A) If the Court determines that a defendant is indigent, counsel shall be appointed. When appointing counsel, the Court shall present to the defendant, and the defendant shall execute and return to the Court for filing, an affidavit of indigence in a form prescribed by the Ohio Public Defender Commission. In the event the defendant files a waiver of arraignment pursuant to Ohio Criminal Rule 10(B), then counsel shall be responsible to secure the execution of an affidavit of indigence as described above.
- (B) Where an accused is charged with multiple offenses, whether in the same case or in separate cases or resulting from separate transactions, the lawyer first appointed shall be appointed for all charges, if practicable. The Prosecutor shall advise the Court, at or before arraignment, if multiple cases exist against a single accused.
- (C) Where an accused is charged with a capital offense, the Court may appoint one or two lawyers to represent the accused before the case is bound over to the Court of Common Pleas. If the accused is indicted for a capital offense, and if a second lawyer has not yet been appointed, the Court shall forthwith appoint a second lawyer for the accused.
- (D) Lawyers who have been appointed to represent indigent defendants, including those accused of capital offenses, shall file, on a form prescribed by the Ohio Public Defender Commission, an application for counsel fees and expenses. The application shall be submitted to the Trial Judge not later than thirty days after sentencing or other complete disposition of a case, unless otherwise Ordered by the Court. Counsel shall be paid or reimbursed for reasonable expenses, and shall be paid counsel fees according to the schedule adopted by the Board of Mahoning County Commissioners, as required by O.R.C. 120.33., or as otherwise determined by the trial judge. The Mahoning County Auditor shall draw a warrant on the county treasury in the amount fixed by Order of the Court, and shall submit the application to the Ohio Public Defender Commission within the time period established by law.
- (E) An attorney who has been appointed to represent an indigent defendant may not be retained in lieu of said appointment, nor shall appointed counsel accept money or in kind payment from the defendant or any other source to represent the defendant in the case(s),

unless first approved by the Judge to whom the case is assigned and a judgment entry has been filed allowing the attorney to withdraw from his appointment after full disclosure to the Court.

- (F) An attorney who is retained to represent an indigent defendant for whom counsel has previously been appointed, shall immediately notify appointed counsel that he has been retained and shall file a Notice of Appearance in the case.

(G) Qualifications of Appointed Counsel

- (1) List of qualified Counsel. The Indigent Public Defense Committee of the Mahoning County Bar Association, in cooperation with the Board of County Commissioners, shall maintain a list of attorneys who have met the requirements set forth for Court Appointed Counsel. The list shall detail the types of cases that the attorneys listed thereon shall be qualified to accept. The list shall be periodically updated and shall be certified by the Committee to the Courts. Except as hereinafter set forth, appointments in indigent defense cases shall be made only from the list. Attorneys, to be qualified as assigned counsel, must meet the minimum qualifications described in the Ohio Administrative Code as adopted by the Ohio Public Defender Commission.

#### **RULE FIVE – CASE FILING AND COURT DESIGNATION**

- (A) The Clerk, upon receiving a criminal transcript(s) from a Municipal or County Court or upon filing of a direct presentment or an information, shall immediately assign only one case number for the defendant named within the transcript(s), direct presentment or bill of information. Assignment of cases indicted shall be effectuated by lot upon arraignment or, when an information is drawn, by lot before the Grand Jury Judge.
- (B) The Clerk shall place a copy of each indictment in each case file.
- (C) Any attorney who files any document in a criminal case shall present to the Clerk of Courts an original and one copy of the document. The Clerk shall stamp and file the original, and shall stamp the copy and immediately place it in the mailbox of the assigned court. Counsel shall designate at or near the case number on each pleading the judge or courtroom to which the case has been assigned.
- (D) The Prosecuting Attorney, when drawing an indictment, shall maintain the original case number assigned. When an indictment joins two or more defendants who have been assigned separate case numbers, it shall be returned under the lowest case number.
- (E) Multiple charges under separate case numbers or indictments pending against one defendant shall all be assigned to the Court with the lowest pending case number. Charges pending against more than one defendant, when factually related and/or arising out of the same act(s) or transaction(s), and whether indicted under the same or separate case numbers shall all be assigned to the Court with the lowest pending case number of any of the defendants so charged. Cases are considered pending until terminated by plea of guilty, jury verdict, or dismissal.
- (F) When an indictment is returned against a defendant who is on probation or community control granted by the Court of Common Pleas, the succeeding indictment shall be assigned by lot according to Section (A) above. Any revocation proceeding shall be heard by the judge who granted the probation or community control wherein the violation is alleged.
- (G) Information Form to be prepared by Prosecutor.



- (1) Upon indictment or information, the Prosecuting Attorney shall complete a form that recites all of the following information concerning the Defendant:
    - (a) Date of Arrest;
    - (b) Date of Preliminary Hearing, if applicable;
    - (c) Defendant's counsel;
    - (d) Whether Defendant has been released on bond;
    - (e) Date of Defendant's release on bond;
    - (f) Any existing or potential holds for probation, community control or parole violations and whether the Defendant is on probation or parole;
    - (g) Any other charges pending, including warrants, other State and Federal charges, and the bond status of such other charges;
    - (h) The final trial date allowable within the time limits of O.R.C. 2945.71 et seq.
  - (2) Said forms shall be completed and delivered to the arraigning court, and Court Assignment Office prior to the arraignment date. A trial date within ninety (90) days of the Defendant's arrest shall be set at arraignment by the Court. All speedy trial deadlines in all cases shall be reported by the Prosecuting Attorney directly to the assigned court on a weekly written report, and such duty shall be a continuing obligation of the Prosecuting Attorney.
- (I) Pursuant to Ohio Superintendence Rules 5 and 36, the individual assignment system is modified to the extent that individuals who meet the then-current criteria of the Mahoning County Drug Court Program or the Mahoning County Cares Program, and wish to waive indictment and enter a plea of guilty or no contest to a bill of information, shall be automatically assigned to that Specialized Docket. Assignments to Specialized Dockets may also be made by the Common Pleas Judge assigned to a case, provided that the defendant in that case is determined upon assessment to be eligible for that Specialized Docket and further provided that the Prosecuting Attorney and Court give approval for the transfer.

## **RULE SIX – ARRAIGNMENT**

- (A) At the time an indictment is filed with the Clerk, the Prosecuting Attorney shall prepare and deliver to the Sheriff a written arraignment schedule listing each defendant to be arraigned and containing the arraignment information.
- (B) Arraignments shall be held on the 2<sup>nd</sup> Tuesday following the date of indictment at 9:00 A.M. unless otherwise Ordered by the Grand Jury Judge.
- (C) The procedure for arraignment shall be as follows:
  - (1) On or before one day prior to arraignment day, the Prosecutor shall deliver to the Grand Jury Judge and Assignment Office a list of the cases that are scheduled for arraignment, noting thereon the names of Defendants who have been arraigned without their presence pursuant to Ohio Criminal Rule 10.
  - (2) If an indigent defendant is unrepresented by counsel, counsel shall be appointed at the earliest available time, and with the consent of the defendant, the arraignment may be conducted with temporary counsel.
  - (3) Pre-arraignment motions by the Prosecutor or Defense Counsel to set or to modify the defendant's bond shall be referred to and decided by the Grand Jury Judge.
- (D) Counsel for a defendant scheduled to be arraigned must appear at such arraignment. In the event counsel is unable to appear, counsel shall either obtain substitute counsel to appear at the arraignment, or reschedule the arraignment through the Grand Jury Judge.
- (E) A Discovery Conference date with the prosecutor, a Pretrial date with the Court, and a Trial date shall be set at arraignment.

## **RULE SEVEN – SEARCH WARRANTS**

- (A) The Clerk shall maintain a separate index, docket and filing system for search warrants to be called the Search Warrant Docket.
- (B) When the Judge files the affidavit, the search warrant, a copy of the return, the inventory or any other papers in connection therewith pursuant to Ohio Criminal Rule 41(E), the Clerk shall secure said documents in a separate jacket, consecutively numbered and indexed by name, or, if no name is provided, by location or other appropriate designation.

## **RULE EIGHT – DISCOVERY CONFERENCE AND PRETRIAL**

- (A) The Discovery Conference with the Prosecuting Attorney and Defense Counsel shall be had in each case as soon as possible after arraignment. The Discovery Conference shall be set by the Court at arraignment and shall precede the pretrial scheduled in the assigned court.
  - 1) Discovery shall be freely exchanged at such conference, and the Prosecutor shall provide discovery as detailed in Local Criminal Rule 9. Counsel shall discuss matters particular to the case, motion deadlines, trial dates and the possibility of resolving the case by plea.
  - (2) The parties shall immediately inform the assigned court of any conflicts with the scheduled pretrial and trial dates before the assigned court.
- (B) The Pretrial before the Court shall be attended by the Prosecuting Attorney, Defendant and Defense Counsel at the time set at Defendant's arraignment.
  - (1) Counsel shall be prepared for trial or other disposition of the case at the time of the Pretrial.
  - (2) All motions, pleadings, and applications for interventions or transfers to Drug Court or Mental Health Court shall be filed prior to said Pretrial.

## **RULE NINE - DISCOVERY**

- (A) At the Discovery Conference scheduled pursuant to Local Criminal Rule 8, and at such later times as necessitated by the receipt of additional information, the Prosecutor assigned to the case shall deliver to counsel for the defendant an “information packet.”
- (B) The information packet shall be given to defendant’s counsel only upon execution of a demand and receipt for same and said packet shall include:
  - (1) All police reports;
  - (2) All witness statements including that of the victim;
  - (3) All statements of defendant and co-defendants;
  - (4) All laboratory and hospital reports;
  - (5) Names and addresses of all witnesses;
  - (6) Criminal records of defendant, co-defendants and all witnesses;
  - (7) Grand Jury transcripts prepared under Local Criminal Rule 2(C).
- (C) The police reports and witness statements supplied in the information packet shall not be used for cross-examination of any witness unless same is properly qualified under Ohio Criminal Rule 16(B)(1)(g) and Ohio Evidence Rule 613.
- (D) Execution of the demand and receipt pursuant to Section (B) above, and acceptance of the information packet by counsel for defendant automatically obligates defendant to supply reciprocal discovery as provided in Ohio Criminal Rule 16 forthwith.
- (E) All exchanges of supplemental discovery shall be completed no later than seven days before the date of trial. Matters not provided by either side to the other in violation of this rule shall not be used at trial without leave of Court for good cause shown.

## **RULE TEN – MOTIONS**

All motions shall be filed in accordance with the Ohio Rules of Criminal Procedure except as otherwise specified in a Court Order. In no event shall any motion be filed later than 7 days before trial unless leave of Court is first obtained.

### **RULE ELEVEN – CRIMINAL ASSIGNMENT**

- (A) Criminal cases will be assigned for hearing or trial by the Court Administrator under the supervision of the Judge to whom the case is assigned.
- (B) A date certain will be assigned for the discovery conference, pretrial and trial at the arraignment.
- (C) The Court Administrator shall be responsible for notification of all hearings and trials to all parties concerned, including the Prosecuting Attorney, Defense Counsel, surety, if any, and the Mahoning County Sheriff, if the defendant is in custody.
- (D) All requests for continuance shall be made by written motion supported by memorandum showing just cause as soon as possible prior to the event sought to be continued. Notice of the filing of such motion shall be served upon opposing counsel, who may file a memorandum in opposition. If the defendant has no counsel and the Prosecuting Attorney files a motion for continuance, such notice shall be served on the defendant.
- (E) A waiver of right to speedy trial, when signed by an accused shall be filed in the Clerk of Courts' office forthwith.

## **RULE TWELVE – TRIAL**

- (A) Transcripts - The Prosecutor shall pay for transcripts prepared at the request of the Prosecuting Attorney. Transcripts prepared at the request of a defendant shall be paid for by the defendant or charged as an expense of an indigent's counsel.
- (B) The Prosecutor shall advise Defense Counsel of his intent to rest his case in chief no later than one-half day beforehand whenever possible.
- (C) To the extent practicable, exhibits shall be marked by counsel before trial; and counsel shall prepare and submit to the Court, opposing counsel, and the court reporter a list of such pre-marked exhibits.
- (D) Counsel shall be responsible to schedule witnesses to timely arrive and be available for testimony in compliance with the Court's schedule so that all matters before the Court will proceed expeditiously.
- (E) Counsel shall submit written requests for charges to the jury no later than one day in advance of the close of the case.



### **RULE THIRTEEN – MEDIA**

- (A) The filming, videotaping or taking of photographs of jurors while in active jury service, either in or out of the courtroom, is prohibited.
- (B) The filming, videotaping, or taking of photographs of victims or witnesses who object thereto is prohibited in the courtroom or any offices or hallways connected with that court.

#### **RULE FOURTEEN – SHERIFF’S REPORT**

- (A) In the event an accused is bound over to the Mahoning County Grand Jury while in jail, the Sheriff shall notify the Court Administrator and the Prosecutor when, and if, the accused is released on bond.
- (B) On the first working day of each month, the Sheriff shall deliver to the Administrative Judge, to the Prosecuting Attorney, and to the Court Administrator, a report of all persons confined in the jail. The report shall separately list defendants held for (1) federal or other authorities outside this county; (2) state parole authority; (3) local probation authority; (4) Domestic Relations Court; (5) Common Pleas Court; (6) Municipal and County Court; and (7) Juvenile Court.
- (C) If a defendant is held or detained by order of more than one authority, such defendant shall be listed under the authority which originally placed the defendant in custody. Other authorities seeking to detain such person(s) shall be separately indicated by the use of footnotes.
- (D) When a defendant is arrested pursuant to a bench warrant, or when a defendant is returned to the Mahoning County Jail from another institution pursuant to an Order of the Common Pleas Court, the Sheriff shall immediately notify, in writing, the Prosecuting Attorney and the Court which ordered the Bench Warrant or issued the Return Order.
- (E) Once a warrant is served, the Sheriff shall remove said warrant from active status and retire the warrant.

## **RULE FIFTEEN – PROBATION VIOLATION**

- (A) Immediately following the arrest of a probationer for an alleged probation violation, the person or agency making such arrest shall notify the Court Assignment Office of the arrest and of the facility at which said probationer is being held.
- (B) Upon such notification, the Assignment Office shall immediately arrange a probable cause hearing before the Judge to whom the person arrested is on probation. Said hearing shall be held within three working days by the sentencing court, or if said court is unavailable, by another Judge of the General Division of the Court of Common Pleas.
- (C) Upon a finding of sufficient probable cause, a final revocation hearing shall be scheduled within 30 days before the Court to whom the defendant is on probation.
- (D) Full disclosure of all information and evidence to be used against the probationer to establish the alleged violation shall be made available to the probationer and/or his counsel sufficiently in advance of the final revocation hearing to allow proper preparation to defend the allegation.
- (E) A copy of the motion filed by the Prosecutor to alter, extend, or revoke probation shall be served as soon as possible by facsimile upon the probationer's last counsel of record. The initial hearing shall be held not sooner than twenty-four nor later than seventy-two hours after service upon counsel of the motion to alter, extend, or revoke probation. Upon the filing of the motion to alter, extend, or revoke probation, the Court may appoint counsel for an indigent probationer.

## **RULE SIXTEEN – POST CONVICTION PETITIONS**

- (A) Post conviction petitions for a determination of a prisoner's constitutional rights shall be filed and docketed by the Clerk under the original case number.
- (B) The Clerk shall deliver the post conviction petition together with the entire record as defined in Ohio Appellate Rule 9 to the Court that sentenced the Defendant and to the Prosecuting Attorney. The record shall be delivered to the Court and Prosecutor within ten working days after the filing of the petition for post conviction relief.

## **RULE SEVENTEEN – WITHDRAWAL OF COUNSEL**

- (A) An attorney who desires to withdraw from representation of a client shall file a motion seeking leave to withdraw, and stating therein, subject to applicable provisions of the Code of Professional Responsibility, the reasons for seeking leave to withdraw. The motion shall also include:
- (1) The last known address and telephone number of the client;
  - (2) A certification that the client has been served with a copy of the motion in accordance with Ohio Criminal Rule 49;
  - (3) A certification that the client has been served, pursuant to Ohio Criminal Rule 49, with all upcoming assignment dates affecting the client or the client's case;
  - (4) A certification that the motion has been served upon the Prosecuting Attorney and counsel for all co-defendants, or the co-defendants themselves if not represented by counsel.
- (B) Except in extraordinary circumstances, to be determined by the Court, Counsel shall not be permitted to withdraw from a case later than twenty-one (21) days prior to a trial or dispositive hearing.
- (C) Motions for leave to withdraw as counsel shall be heard by the Court to which the case is assigned, and the Defendant, Defense Counsel, and Prosecuting Attorney shall be present. The hearing shall be recorded.

## **RULE EIGHTEEN – DISCRETION OF COURT**

These rules are applicable to all criminal proceedings in the Mahoning County Common Pleas Courts unless otherwise specifically ordered in an individual case by written judgment entry of the Judge presiding over such case.

**RULE NINETEEN – EFFECTIVE DATE OF CRIMINAL RULES OF COURT**

These rules are adopted by the Court and shall take effect on January 14, 2008.